

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAMES BONINI
CLERK

2004 NOV -2 P 5:54

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EASTERN DIVISION

THE OHIO DEMOCRATIC PARTY)
Plaintiff,)
v.)
J. KENNETH BLACKWELL, Secretary of State,)
in his official capacity, THE FRANKLIN)
COUNTY BOARD OF ELECTIONS, KNOX)
COUNTY BOARD OF ELECTIONS)
Defendants.)

)

C2 04 1055

JUDGE MARBLEY

MAGISTRATE JUDGE KEMP

1. Plaintiff the Ohio Democratic Party brings this action, pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1983, for immediate injunctive relief. Voting in Franklin and Knox Counties is grinding to a halt. Because of a failure to supply an adequate number of voting machines, thousands of Ohio voters may be disenfranchised if this Court does not take immediate action to ensure an alternative means for them to cast their votes. Plaintiff seeks emergency injunctive relief to provide an alternative means to supplement the inadequate electronic voting systems in these counties.

2. Plaintiff Ohio Democratic Party is an organization operating under the laws of Ohio. Plaintiff has standing to enforce the rights asserted herein on behalf of itself and its members.

3. Defendants Franklin County Board of Elections and Knox County Board of Elections administer voting in Franklin and Knox Counties and are responsible for providing sufficient mechanisms and supplies for voting under Ohio law.

4. Defendant J. Kenneth Blackwell is the Ohio Secretary of State and as such is the chief elections officer for the state, pursuant to ORC § 3501.04.

5. Jurisdiction and venue in this Court are proper, as all parties reside in Ohio and the events complained of occurred in this County.

6. Voting in precincts in Franklin County and Knox County is by electronic voting machine.

7. As the accompanying affidavits demonstrate, voting in these Counties is nearly at a standstill, and the situation is only getting worse. Because of a failure to supply an adequate number of voting machines, thousands of Ohio voters may be disenfranchised if this Court does not take immediate action to ensure an alternative means for them to cast their votes.

8. At present, voters at precincts throughout the County are standing in lines for up to five hours awaiting the opportunity to vote. When the evening rush occurs in just an hour or two, lines are expected to increase exponentially.

9. The number of voting machines at precincts in this County is plainly inadequate to handle the number of voters who are expected to turn out today. The number of voting machines at each precinct was based on an assumption that turnout would be average. But today is clearly not an average day. In some precincts, astonishingly, there are even fewer voting machines than there have been in previous elections, despite the indications leading up to today that turnout would be unprecedented.

10. The massive lines are deterring voters from waiting to cast their ballots. Some voters at the end of the lines are leaving the polling places upon learning of the expected wait and others are refusing to line up altogether. The situation is dire.

11. Plaintiffs have sought relief from the Franklin County Board of Elections to ensure that every eligible voter in Franklin County is able to cast a ballot. Plaintiffs requested, for example, that paper ballots be supplied to supplement the inadequate number of machines. Those ballots are currently used by the polling places for absentee ballots. The Board, however, refused to provide this alternative avenue.

12. As a result of the inadequacies of the precincts' election facilities and supplies, Plaintiffs and voters throughout Franklin County will suffer immediate and irreparable harm.

13. The only remedy to avoid the irreparable harm that will ensue if voters are prevented from reaching from reaching the polls is to provide an alternative means of voting.

CAUSE OF ACTION

1. Defendants' refusal to provide necessary and adequate voting machines or paper ballots is unduly burdening plaintiffs' right to vote under the Ohio Constitution.

2. Defendants' refusal to provide necessary and adequate voting machines or paper ballots is unduly burdening plaintiffs' right to vote under the U.S. Constitution.

3. Defendants' refusal to provide adequate voting machines or paper ballots violates Ohio Rev. Code sec. 3501.29 (A).

4. Defendants' refusal to provide necessary voting machines or paper ballots violates Ohio Rev. Code sec. 3501.30 (A).

WHEREFORE, Plaintiff respectfully requests a temporary restraining order and a preliminary and permanent injunction requiring Defendants to provide paper ballots, or another alternative means of voting to voters in Franklin and Knox Counties.

Respectfully submitted,



Kathleen M. Trafford (0021753)
Porter Wright Morris and Arthur LLP
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Columbus, Ohio 43215
(614) 227-1915
(614) 227-2100
ktrafford@porterwright.com

AFFIDAVIT

STATE OF OHIO

COUNTY OF Knox

ss:

1. My name is DAVID LYNN and I have personal knowledge of the facts stated below.

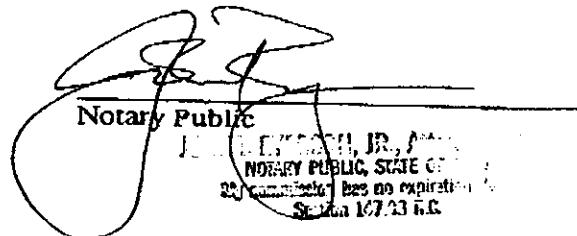
2. On November 2, 2004, at approximately _____ p.m., I personally witnessed the following events at the polling site located at Gambier: I have been waiting in line to vote for 3 hours. There are approximately 200 people ahead of me, and the line is moving very slowly. I have observed people leave the line due to frustration. I may not be able to vote for 4-5 hours.

3. The above-described conduct has caused me irreparable harm, as I fear that I and others will not be able to vote absent a temporary order directing remedial action. I have no adequate remedy at law to redress these harms.



David Lynn

Sworn before me and subscribed this 2nd day of November, 2004.



Notary Public
JAMES E. SMITH, JR., #100-000000
NOTARY PUBLIC, STATE OF OHIO
My Commission has no expiration date
Section 167.23 R.C.

AFFIDAVIT

STATE OF OHIO)

COUNTY OF Knox)

ss:

1. My name is Elizabeth Heer and I have personal knowledge of the facts stated below.

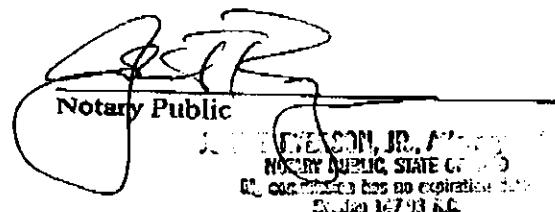
2. On November 2, 2004, at approximately 4:40 p.m., I personally witnessed the following events at the polling site located at Gambier: I have been waiting in line for $3\frac{1}{2}$ hours. There are approximately 300 people ahead of me, and the line is moving very slowly. I have observed people leave the line to vote because of frustration. I may not be able to vote for 4-5 hours.

3. The above-described conduct has caused me irreparable harm, as I fear that I and others will not be able to vote absent a temporary order directing remedial action. I have no adequate remedy at law to redress these harms.

Elizabeth J Heer

Elizabeth J. Heer

Sworn before me and subscribed this 2nd day of November, 2004.



AFFIDAVIT

STATE OF OHIO)

COUNTY OF Knox)

ss:

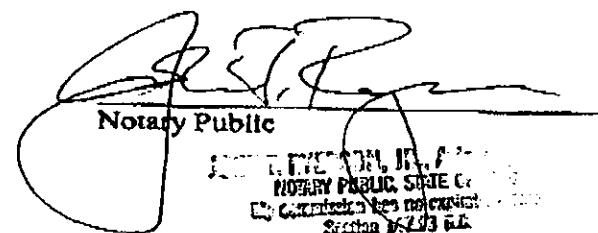
1. My name is Florence L. Short and I have personal knowledge of the facts stated below.

2. On November 2, 2004, at approximately 4:35 p.m., I personally witnessed the following events at the polling site located at Gambier: I have been waiting in line for 3 1/2 hours. There are approximately 300 people ahead of me waiting to vote, and the line is moving slowly. I have observed people leave the line due to frustration. I may not be able to vote for 4 hours.

3. The above-described conduct has caused me irreparable harm, as I fear that I and others will not be able to vote absent a temporary order directing remedial action. I have no adequate remedy at law to redress these harms.


Florence L. Short

Sworn before me and subscribed this 2nd day of November, 2004.


Notary Public
ANTHONY E. REED, JR.
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires December 31, 2007
State of Ohio

I, Joanne E. Aubrey, hereby declare the following:

1. I am over the age of 18.
2. I am a registered voter in Franklin County. Today Nov 2, 2004, I served as a challenger at precinct 44D located at 4225 Macbray Ave. in Columbus.
3. There are 3 voting machines at this precinct. I have been informed that in prior elections there were normally 4 voting machines.
4. At 1:45 P.M. there are approximately 85 voters in line. At this time, the time to vote is approximately 3 hrs long. It has been at least 2 hrs. already.
5. This precinct is largely African American.
6. I have personally witnessed voters leaving the polling place without voting due to the length of the line.

I declare under penalty of perjury that the foregoing is true & correct to the best of my knowledge.

Joanne E. Aubrey
JOANNE E. AUBREY
11/2/04

11-2-04

I, Henry W. Eckhart, hereby declare the following:

(1) I am over the age of 18.

(2) I am a registered voter in Franklin County, Ohio.

(3) Today, (11/2/04) I served as a challenger at precinct 243 located at 2048 Denison Ave, in Columbus, Ohio. This precinct has 3 voting machines and 630 registered voters. This is approx 500 voters per machine.

(4) At 1:00 P.M. there were approximately 100-125 voters in line. I saw voters taking 2-5 hours to get from the poll book to a voting machine.

(5) I have personally observed many voters who left the polling place without voting after they registered and then found out it would be 1-5 hours to get to vote.

(6) One problem was that many voters were taking more than the 5" to vote. I saw some take 10-15 minutes.

(7) Many voters complained about the delays and the system.

I declare, under penalty of perjury that the foregoing statement is true to the best of my knowledge and belief. Henry W. Eckhart.

I, Gabrielle Wonnell, hereby declare the following:

- 1.) I am over the age of 18.
- 2.) I am a registered voter in Franklin County.
- 3.) Today, (11/2/04), I served as a challenger at Precinct 5B, located at 1414 Gault, Kent Elementary, in Columbus, OH. This precinct has 3 voting machines at present. I have been informed by Franklin County election officials that this precinct usually has at least 5 (five) machines.
- 4.) At 1:30 p.m. there are approximately 75 voters in line. I have observed that each voter spends approximately 4 minutes in the voting booth. At this time, the line takes approximately 2½ to 3 hours to vote.
- 5.) I have personally observed several voters leave because the length of the line is too long.
- 6.) This precinct is predominately African-American.
- 7.) At 2:45 there are approximately 70-75 voters in line. Voters continue to take about 4 minutes in the booth. At this time it takes over 3 hours to vote.
- 8.) From the time the polls opened it has taken more than one hour to vote, and the time to vote is continually increasing. Many voters have told me how frustrating this is.

I declare under penalty of perjury that the foregoing statement is true to the best of my knowledge.

Gabrielle Wonnell 11/2/04

AFFIDAVIT

I, Joel S. Kent declare:

I am above 18 years of age.

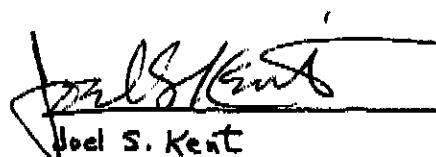
I am a registered voter in Franklin County, Ohio.

Today on November 2, 2004 I served as a Challenger in Precinct 57-C and have also observed voting in the adjacent Precinct 57-G.

Through the day I have observed extremely lengthy lines of voters who waited up to two hours to cast their ballots.

I also observed that in Precinct 57-G, there were only three voting machines, although the poll workers and voters say they routinely have four machines in previous elections,

The foregoing is based on my personal knowledge and I declare under penalty of perjury is true.


Joel S. Kent

November 2, 2004
date

Declaration

I, Margaret Cordray, declare as follows:

- (1) I am above the age of 18;
- (2) I am a registered Voter in Franklin County, and on Nov. 2, 2004 I served as a Challenger at precinct 51C, which is located at Koebel Elementary School, 2521 Fairwood Av.
- (3) throughout the day, there were extremely long lines, with wait times from 2 1/2 - 3 1/2 hours;
- (4) the great majority of those voting in this precinct were African-Americans;
- (5) the above is based on my personal knowledge;
- (6) I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed:

Margaret Cordray
Margaret Cordray
11/2/04

I Jan Allen hereby declare the following:

1. I am above 18 years of age.
2. I am a registered voter in Franklin Co., and today 11-02-04 I serve as a challenger at precinct 10C located at St. Alphonsus Family Center, 35 Midland Avenue, Columbus, Ohio
3. There are three (3) voting machines at this precinct. I was informed by the election judge that there are normally 4 or 5 voting machines at this precinct.
4. At 12:00 noon there were 42 people in line. I observed that each voter remained in the voting booth approximately 5 minutes.
5. At this time, the line to vote is approximately 1 hour ^{and 15 minutes} long. The lines have been at least as long all day long.
6. I've interviewed personally several voters leaving the polls due to the length of the line.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Jan Allen
Jan Allen
11-02-04

I, Dan Ye, declare that I am 18 years of age, registered voter in Franklin County, Ohio. On November 2nd, 2004, I served as a Challenger in Precinct 45 F in Franklin County, Ohio. I have observed throughout the day that line is extremely long, and voters have to wait more than two hours to ~~vote~~ cast their vote. I have observed numerous intended voters, counting more than twenty, leaving because of the long waiting time.

The foregoing is based on my personal knowledge. I declare under the penalty of perjury that the foregoing information is true.

Dan Ye

Dan Ye

November 2nd, 2004

I, Katherin Emerick, hereby declare the following

- (1) I am above 18 years of age;
- (2) I am a registered voter in Franklin County, and today, November 2, 2004 I served as a Challenger at Precinct 17 C located at Hudson Elementary School at 2323 Lexington, Columbus, Ohio;
- (3) At this precinct there are four voting machines.
- (4) This precinct's population is predominantly African-American.
- (5) At 11:30 AM there were approximately 172 persons in line waiting to vote. Between 9:46 and 10:23 AM I timed 12 voters and the average voting time was 4.7 minutes. At this rate a voter getting in line at 11:30 was looking at a wait of 3.3 hours.
- (6) At 3:00 PM about 2 people with an estimated 15 minutes to wait for a booth to open up what time they had arrived, and it was 12:00 noon.

I declare under penalty of perjury
that the foregoing is true & correct.

Katherin A. Emerick

I, Richard D. Topper, being over 18 years of age and a registered voter of Franklin County, Ohio, being duly sworn, declare and say:

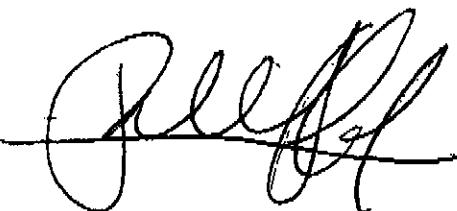
1. Today, on November 2, 2004, I am serving as a challenger and witness at Precinct 65-H in Columbus, Franklin County, Ohio.

2. I have witnessed very long lines with some voters waiting up to 40 minutes.

3. I observed a broken voting machine that was not in use for approximately 2 hours. There are a total of three machines at Precinct 65-H. ~~the presiding judge~~ was very diligent, but could not get through to the ~~BOE~~ ^{BOE}

4. I declare under penalty of perjury, the above to be true.

11/2/04



I, Josh Schoenberger, hereby declare
the following:

- ① I am above 18 years of age;
- ② I am a registered voter in Franklin County, and today, November 2, 2004, I served as a challenger at precinct 25-F, located 2500 Perdue Ave, Columbus, OH;
- ③ There are three voting machines at this precinct; I was informed there are normally 4 voting machines usually at this precinct.
- ④ I have observed voters at this precinct ~~avg~~ averaging 2 minutes per voter. Approximately
- ⑤ At 12:35, there are approximately ~~90~~ 90 voters in line. The wait in line at this precinct is approximately 3 hours. The line has been this long all day. ~~as of now~~

- ① I have personally observed voters leaving without having voted due to the long lines;
- ② This precinct is predominately African American.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge

Josh L. Schoenberger
Josh L. Schoenberger

Signature Witnessed by:

Carol Rowan Frank
Carol Rowan Frank 11/2/04

Paul G. Rozelle
11/2/04

Declaration of Paul G. Rozelle

- 1) I am over the age of 18, and am a registered voter in Franklin County, Ohio
- 2) I am an appointed challenger in Ward/Precinct 18C. The polling station at McCary & Ti Elementary School also serves Ward/Precinct 18A.
- 3) Since the polling station opened at 6:30 AM on November 3, 2004, the lines at both precincts have been extremely long. At 2 PM, the lines at both precincts are running at over three hours from the time that a voter enters the line until the time that a voter casts his or her ballot. The wait time at both precincts has been increasing throughout the day, and at 1 PM, at 2 PM, continuing to increase.
- 4) There are only 4 voting machines for precinct 18C. There are only 3 voting machines for precinct 18A. The presiding judge at Precinct 18A told me that they had 4 machines in prior elections, but that due to low turn-out in the last primary, they "lost" a machine and now had to operate with only 3 machines.
- 5) I have observed multiple people leaving after observing the length of the line and inquiring of bystanders or recent voters about the waits.

6) At 2pm, there are approximately 150 in line at Precinct 18A. In the past 3 hours at precinct 18B, only 100 people have cast ballots. At this rate, it will take nearly 5 hours for those persons at the end of the line to vote.

7) The foregoing is based on my personal knowledge.

8) I hereby declare that the foregoing is made under the pains and penalties of perjury, and that it is true and correct.

Paul G. Rozelle
Paul G. ROZELLE
140 S. CASSINGHAM RD.
BEXLEY, OH 43229

November 2, 2004, 2:10pm.

9) At 4pm, the wait for both precincts is 4 hours or more, and the lines are continuing to increase. Voters are continuing to leave without voting, especially from Precinct 18A, which has the longer line (average wait time is about 4 1/2 hours).

10) The foregoing addendum is based on personal knowledge and is true and accurate under the penalties of perjury.

I, Richard L Frost, declare as follows:

1. I am above the age of 18;
2. I am a registered voter in Franklin County and I am serving as Presiding Judge, a position I have held for some 15 + years, in Precinct 40.

In all of my years of service as Presiding Judge the line at my polls the longest I have seen with some waiting as long as 4-5 hours to receive authority to vote / voting.

I believe one of the main reasons for the delay has been the lack of planning and sufficient voting machines to meet the projected high turn out of voters as had been projected.

I expect the situation to only worsen in the early evening heavy turnout. Approaches I have suggested additional machines since 6:40 P.M. and no assistance has been offered.

There are approximately 3,600 voters in line at present and I expect several hundred more in Precincts 33 E and 40 C at the Dennis Recreational Center. With the average person requiring five minutes to vote each machine can only handle @ 12 people per hour.

I declare under oath as follows: At 1...

I am serving as Presiding Judge, a position I have held for some 16 + years, in Precinct 4.

In all of my years of service as Presiding Judge the line up for the longest I have seen with some waiting as long as 4-5 hours to receive authority to vote / voting.

I believe one of the main reasons for the delay has been the lack of planning and sufficient voting machines to meet the projected high turnout of voters as had been projected.

I expect the situation to only worsen as the early morning heavy turnout approaches and have requested additional machines since 6:45 A.M. and no assistance has been offered.

There are approximately 300 voters in Precinct 4 and I expect several hundred more in Precincts 33 E and 40 C at the Demarest Recreation Center with the average person requiring five minutes to vote each machine consisting of 12 people per hour.

I declare under penalty of perjury the above statement is true and correct to the best of my knowledge and is based upon my personal experiences.

Signed Richard L. Lust
Date November 2, 2024